

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAKE PANKEY,

Plaintiff,

v.

9:20-CV-0577
(GTS/DJS)

R. BAMBOSA, et al.,

Defendants.

APPEARANCES:

JAKE PANKEY
19-R-0015
Plaintiff, pro se
Orleans Correctional Facility
3531 Gaines Basin Road
Albion, NY 14411

GLENN T. SUDDABY
Chief United States District Judge

DECISION and ORDER

Pro se plaintiff Jake Pankey ("Plaintiff") commenced this action on May 27, 2020, by filing a Complaint for relief pursuant to 42 U.S.C. § 1983 and an application to proceed in forma pauperis. Dkt. Nos. 1 ("Compl."); 2 ("IFP Application").

By Decision and Order filed July 30, 2020 (the "July Order"), the Court granted Plaintiff's IFP application and reviewed the sufficiency of the Complaint in accordance with 28 U.S.C. § 1915(e) and 28 U.S.C. § 1915A. Dkt. No. 6. On the basis of that review, the Court found that Plaintiff's Fourteenth Amendment procedural due process claim against defendant Bambosa survived review. *See id.* The Court held service of the Complaint and a response

from Bambosa in abeyance pending a *Peralta* Waiver from Plaintiff. *See id.*

On September 24, 2020, in lieu of a *Peralta* Waiver, Plaintiff filed an Amended Complaint. Dkt. No. 9. In a Decision and Order filed on October 30, 2020 (the "October Order"), the Court reviewed the sufficiency of the Amended Complaint in accordance with 28 U.S.C. § 1915(e) and 28 U.S.C. § 1915A. Dkt. No. 10. The Court found that the Fourteenth Amendment claim against Bambosa survived review and afforded Plaintiff a second opportunity to submit a *Peralta* Waiver. *See id.*

On November 23, 2020, in lieu of a *Peralta* Waiver, Plaintiff filed a motion to withdraw the Complaint. Dkt. Nos. 12 and 13 (submission in support).

Rule 41(a) of the Federal Rules of Civil Procedure provides in relevant part that a plaintiff "may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A). Rule 41(a) further provides that unless the notice provides otherwise, "the dismissal is without prejudice." Fed. R. Civ. P. 41(a)(1)(B).

Since defendant has not been served, and has not answered or moved for summary judgment, Plaintiff is entitled to voluntary dismissal of the action, without further order of the court, upon the filing of such a notice. Fed. R. Civ. P. 41(a)(1)(A)(i). And, by rule, "[u]nless the notice . . . states otherwise, the dismissal is without prejudice. . . ." Fed. R. Civ. P. 41(a)(1)(B).

In light of the foregoing, upon the filing of Plaintiff's motion to withdraw, this action is dismissed, without prejudice.

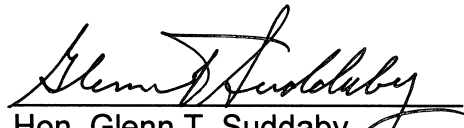
WHEREFORE, it is hereby

ORDERED that Plaintiff's motion (Dkt. No. 12) is **GRANTED**; and it is further

ORDERED that the Clerk of the Court close this case and reflect that the action is voluntarily dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure; and it is further

ORDERED that the Clerk serve a copy of this Decision and Order on Plaintiff.

Dated: January 6, 2021
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge